

European Banking Authority
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By e-mail: CP-2012-4@eba.europa.eu

July 31, 2012

Dear Sir / Madam

EBA Consultation Paper on Draft Implementing Technical Standards on Disclosure for Own Funds by Institutions (EBA/CP/2012/04)

Standard & Poor's Ratings Services ("Standard & Poor's") appreciates the opportunity to provide the European Banking Authority (the EBA) comments on its "*Consultation Paper on Draft Implementing Technical Standards on Disclosure for Own Funds by Institutions*" (the "CP") issued in June 2012. The views expressed in this response represent those of Standard & Poor's Ratings Services and do not address, nor do we intend them to address, the views of any other subsidiary or division of Standard & Poor's Financial Services, LLC or of its parent, The McGraw-Hill Companies, Inc. We intend our comments to address the analytical needs and expectations of our credit analysts. Our current ratings criteria are not affected by our comments on the CP.

Standard & Poor's Supports The European Banking Authority's Proposals To Improve Banks' Disclosure Of Own Funds

We broadly support the EBA's proposals as set out in the CP, as we believe that they will contribute significantly to enhancing users' understanding of the capital composition of banks.

We strongly support the CP's proposal for the use of common templates as we believe that this will greatly enhance market understanding and allow greater comparability across banks. We suggest that the template approach is not diluted, as we believe this would undermine the rationale for mandating templates (which, as we understand it, is to enhance comparability and reduce complexity). Therefore, we think that the scope for

preparers to amend the templates should be appropriately limited or eliminated. At the same time, in order to avoid the risk of a mechanical, tick-box approach when banks complete the templates, we think that the proposals should include an overarching requirement to provide additional disclosures where necessary for a proper understanding of the bank's capital position.

We agree that the disclosure templates should be published with the same frequency as banks' financial reports. We also believe that the timeliness of the templates is at least as important as their frequency and thus we welcome the proposal that the templates should be published at the same time as the annual report.

Standard & Poor's Welcomes The Use Of Standardized Templates

One of the key elements of useful disclosure in our opinion is comparability, both across banks and over time. We consider that comparability becomes more difficult when the underlying subject matter is inherently complex, as in the case of banks' capital. We welcome the proposals in the CP to mandate the use of standardized templates, because we believe this approach could help to mitigate complexity and enhance comparability.

We also believe that in order for the template approach to be most effective, the scope for preparers to amend the templates (for example, by combining or omitting lines in the templates, perhaps on the basis of their materiality assessments) should be appropriately limited or eliminated. In our view, it would be far more difficult--if not impossible--to make comparisons across shorter, but non-identical, "summarized" templates than it would across identical templates, even though they may be longer. In other words, we believe that the use of summarized templates would undermine the rationale for mandating templates.

That said, we consider it important that the template approach does not preclude preparers from providing additional disclosure where necessary; preparers should not be led to take a "tick-box" approach to completing the templates. That is why we think that the proposals should include an explicit, overarching requirement to provide additional disclosure where that is necessary for a proper understanding of a bank's capital position.

We understand that it is sometimes appropriate for individual jurisdictions to add items to the templates to reflect circumstances specific to those jurisdictions. However this raises the concern that individual jurisdictions differ in their approaches to adding similar items, which in our view creates an added layer of complexity that is not helpful. That said, the more comprehensive the templates can be, the better. In cases where the templates differ from those proposed by the Basel

Committee, there may be merit in mandating some form of reconciliation from the EBA's templates to the Basel Committee's templates, to help users understand the nature and magnitude of any differences. This is particularly relevant with regard to any differences in the characteristics of instruments that will be included in Common Equity Tier 1 under the Capital Requirements Regulation¹ [footnote 1] compared to Basel III² [footnote 2].

Similarly, inconsistent interpretation and application of the templates by banks would undermine comparability. Although the explanations for each row that are provided in the CP are helpful, we do not believe that they will be sufficient in ensuring consistent interpretation and application. We suggest that the EBA works with the Basel Committee to help the Basel Committee establish a central process to address technical queries in a consistent manner, and publishes its responses to common queries to further promote consistent interpretation and application of the templates.

Data Items In The Templates

We broadly agree with the data items that the EBA proposes to include in the templates and, in particular, we consider that the approach proposed for the transitional period to 2018 will provide users with relevant information in a clear and comparable format.

We also agree with the introduction of a "main features template," as outlined in the CP. However, based on the experience of recent years, in our view the conditions under which a capital instrument's coupon or dividend payments can be suspended or cancelled is highly relevant in assessing that instrument. That is why we think that items 16a and 16b of the main features template (in Annex II of the CP), which requires the coupon or dividend payment to be classified as either "fully discretionary," "partially discretionary" or "mandatory," will not provide a sufficient basis to assess these conditions. A number of factors can have a significant impact on whether the coupon or dividend must be paid and the template should require these to be described clearly. They include the following:

- look-back or dividend pusher periods;
- clauses that link deferability or cancelability to payments made on one or more pari passu instruments;
- clauses that require coupons to be paid if the issuer has sufficient distributable reserves or meets minimum regulatory capital requirements, and

¹ European Commission, Proposal for a regulation of the European parliament and of the Council on prudential requirements for credit institutions and investment firms, 20 July 2011.

² Basel Committee on Banking Supervision, Basel III: A global regulatory framework for more resilient banks and banking systems, June 2011.

- clauses that require nonpayment if the issuer reports a loss in a particular accounting period.

Furthermore, we believe that the templates should also apply to all capital instruments, i.e. including common equity.

We would be pleased to discuss any or all of the matters we have raised with you further. If you have any questions or require additional information, please contact Arnaud De Toytot (arnaud_detoytot@standardandpoors.com/+33-1-4420-6692 or Osman Sattar (osman_sattar@standardandpoors.com/+44-20-7176-7198).

Yours sincerely,



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